

THE WHITE HOUSE

WASHINGTON

May 6, 1982

MEMORANDUM FOR THE CABINET COUNCIL ON HUMAN RESOURCES

FROM: ROBERT B. CARLESON
EXECUTIVE SECRETARY

SUBJECT: Mandatory Retirement Age Initiative

ISSUE: Should the Administration's Mandatory Retirement Age Initiative be broadened to prohibit additional forms of age discrimination beyond 70 years of age?

BACKGROUND:

- o At a meeting of the Cabinet Council on March 30, 1982, the President made the following decision: "Back or propose legislation to prohibit mandatory retirement based solely on age."
- o The Age Discrimination in Employment Act currently prohibits all forms of age discrimination below age 70, including hiring, firing, promotion and demotion as well as mandatory retirement based solely on age.
- o The Act also permits certain work class exemptions and limits employer liability in retirement systems. For some time Rep. Claude Pepper and others have been trying to remove the exemptions and mandate continuing retirement system contributions by employers. On the other hand business groups have been trying to amend the Act to give themselves greater protection.
- o Discussions with Senator Heinz and Hatch and Reps. Rinaldo and Pepper have resulted in a tentative commitment on their parts to sponsor a "clean" bill removing age 70 as a limit to prohibition against mandatory retirement without affecting any other sections of the Act. Rep. Pepper wants a commitment from the Administration and Senate leadership that no other amendments will be permitted, leaving other amendments to be considered separately. He assures the commitment of the House leadership.
- o The problem we face is that they interpret the phrase "elimination of mandatory retirement" to include other forms of age discrimination now prohibited by the Act (e.g., hiring, promotion). The decision of March 30, 1982, would not effect any changes other than mandatory retirement.

- o The consensus of opinion among the key legislators is that only a bill agreed upon in advance by all the parties will have a chance of passage in this Congress.

OPTIONS

- Option 1: Submit a bill limited only to mandatory retirement consistent with the decision of March 30 and attempt to get as many as possible of the key legislators as sponsors.
- Option 2: Agree to a bill that will prohibit all forms of age discrimination beyond age 70 now prohibited by the Age Discrimination in Employment Act for persons between 40 and 70 years of age, subject to a commitment by Rep. Pepper and the House leadership that no other amendments to the Act will be permitted.

Arguments for Option 2

- o Probably will result in successful legislation which will not be broadened with unacceptable amendments.
- o Will be more warmly received by aging organizations than simple removal of mandatory retirement.
- o Would limit attacks from partisan opposition.

Arguments Against Option 2

- o Will receive more opposition from business groups than Option 1. Most business groups will not actively oppose Option 1.
- o Will create more lawsuits against employers than Option 1. (E.g., An employer is in a different situation with an employee who has worked for him for some time in supporting a decision to retire an individual who is no longer capable of performing his job, than he would be in refusing employment to someone well over 70 years of age.)